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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2016/2017

UCL3622 – COMPANY LAW II (All Sections / Groups)

24 FEBRUARY 2017

Reading Time : 9.00 a.m. – 9.15 a.m.
(15 Minutes)

Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have fifteen minutes during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining THREE HOURS in which to answer the questions.
2. This Question paper consists of 4 pages with 4 Questions only.
3. Answer ALL THREE questions in PART A and ONE (1) question in PART B. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are allowed to bring into Examination Hall CLEAN and ORIGINAL copy of:
 - i. Companies Act 1965
 - ii. Capital Market and Services Act 2007
5. Please write all your answers in the Answer Booklet provided.

PART A : Answer ALL questions.

QUESTION 1

On 24 January 2012, Ms. Chiaki as one of the directors of Karusi Sdn. Bhd. ("the company") issued a 14-day written notice to hold an Extraordinary General Meeting ("EGM"). The notice stated that the purpose of the meeting was 'to pass resolutions to amend the relevant articles of the Articles of Association and several other matters arising therefrom'. No further details were explained and/or stated about the purpose of the meeting.

The meeting was attended by Ms. Chiaki and Mr. Hekka who holds 20% and 40% of voting shares respectively. At the same time, Ms. Chiaki also represented her friend Mr. Hiro who holds 30% of voting shares. Madam Sandari, the holder of the remaining voting shares did not come to the meeting.

The meeting was initially chaired by Mr. Hekka. However, 10 minutes after the meeting started, Mr. Hekka received an emergency telephone call and immediately left the meeting. Hence, Ms. Chiaki continued to conduct the meeting as chairperson and subsequently passed a resolution to alter the article regarding the rights of dividend of the company's shareholders and to allow the removal of the company's auditor upon approval by only one director of the company.

Madam Sandari was upset with the company's resolution and contended that the meeting was not valid due to lack of quorum. She also claimed that the notice of the meeting was not sent to her as she never received such notice.

In addition, Mr. Hiro also claimed that Ms. Chiaki had acted against his instruction in the proxy form which was subsequently denied by Ms. Chiaki.

Discuss all issues pertaining to the valid requirements of a company's meeting.

(Total: 25 marks)

Continued

QUESTION 2

The rules set out in the case of *Foss v Harbottle* (1843) 67 ER 189 leave the minority shareholders of a company in an unprotected position. However, exceptions have arisen and statutory provisions have come into being which provide some protection for the minority. Discuss.

(Total: 25 marks)

QUESTION 3

Carnaby Berhad (Carnaby) was listed on the stock exchange. Since 2015, Carnaby has been having financial problem and is trying to rescue it from financial collapse. Carnaby was eventually de-listed in May 2016.

Advise Carnaby whether there is any mechanism to restructure or facilitate a formal compromise of its debts under the Companies Act 1965 and what are the procedures.

(Total: 25 marks)

Continued

PART B

Answer either Question 4A OR 4B.

QUESTION 4

- A. Jacky Chan, Jacky Jeung and Jade Ling are the shareholders of SuperBig Sdn. Bhd. (SuperBig). During an annual general meeting (AGM) of SuperBig held in 2012, a resolution was passed where SuperBig will issue 30000 units of shares at premium of RM3.00 per share to Jacky Chan.

SuperBig's Articles of Association state that the par value of the share is at RM1.00 per share. Jacky Chan had paid the sum of RM30,000.00 only to SuperBig. The balance is to be paid later upon calls of the company.

In another AGM held in 2014, SuperBig passed another resolution to allot and issue another 50,000 units of fully paid share to Jade Ling secured by a debenture in consideration for the sum of RM25,000.00 lent by Jade Ling to the company.

Few years later Jade Ling offered to sell all her shares to Jacky Jeung who recently was appointed as the director of the company. However, it was refused by Jacky Jeung who contended that the shares held by Jade Ling was invalid as it was issued at discount.

At the same time, SuperBig also sent a written call notice to Jacky Chan to claim for the balance of the unpaid sum of shares from him. Knowing that SuperBig was in the threat of winding up, Jacky Chan ignored the notice.

Discuss.

(Total: 25 marks)

Continued

B. Fortnum Sdn. Bhd. (Fortnum) is a leading steel producer. In June 2016, Fortnum has secured RM2 million export finance facility from Mason Bank, Liberty Bank and Nunstead Bank. As security for the facility, Fortnum issued a debenture secured by the following:

- (i) a factory with the address of KM112, Leather Lane, Batu Pahat created in favour of Liberty Bank on 1 June 2016;
- (ii) Fortnum's assets and undertaking, whatsoever and wheresoever situate both present and future, including but not limited to the raw materials, stock in trade, which are or may from time to time while the debenture is in force, created in favour of Mason Bank on 15 June 2016; and
- (iii) SMS Siemag Steel Making Machine, created in favour of Nunstead Bank on 1 July 2016.

All the debentures were duly registered with the Companies Commission of Malaysia (CCM) on 28 July 2016.

Sometime after the registration, Mason Bank found out that there was a charge created on 4 March 2016 over all of Fortnum's assets both present and future in favour of Oval Bank. The debenture to the charge in favour of Oval Bank contained a clause which provided that the charge shall immediately attach and become affixed if Fortnum charges or attempts to charge or encumber any of its property or assets without the prior written consent of Oval Bank.

However, on 30 December 2016, a winding up petition was filed against Fortnum and consequently, Fortnum was wound up on 25 January 2017.

Advise the relevant parties on the validity and priority of the charges.

(Total: 25 marks)

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